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Small and medium businesses development in Russia: legal updates

In July and August 2018, the Federal Laws were signed aimed to expand:

- measures of property support for small and medium businesses;
- criteria to qualify as small and medium business entities.

1. Participation in Buying Out State or Municipal Property and the Right to Lease Land Plots

Federal Law No. 185-FZ dated 3 July 2018 ('Law No. 185-FZ') introduced amendments to the Land Code of the Russian Federation, Federal Law No. 209-FZ dated 24 July 2007 'On the Development of Small and Medium Enterprises in the Russian Federation', and Federal Law No. 159-FZ dated 22 July 2008 'On the Specifics of Alienation of Immovable Property Being in the State Ownership of Constituent Entity of the Russian Federation or in the Municipal Ownership and Leased by Small and Medium Business Entities, and on Amending Certain Legislative Acts of the Russian Federation'.

The small and medium business entities (SME) are given the pre-emptive right to purchase real estate being in federal ownership by analogy with their pre-emptive right to buy out immovable property that is in the state ownership of a constituent entity of the Russian Federation or in municipal ownership.

The term of the pre-emptive right to buy out the leased property is abrogated (meaning that this right can be exercised without a limitation of a term), as well as the deadline (1 July 2015), as of which the leased property should be leased by SME under the lease agreement in order to exercise the pre-emptive right.

Legal owners of state and municipal property (state and municipal institutions, state and municipal unitary enterprises) may propose to include such property into the list of state property and municipal property intended for leasing to SME (hereinafter - the 'lists') with the consent of the state authority of the Russian Federation, public authority of a constituent entity of the Russian Federation, or a local government that are authorised to approve transactions with the relevant property.

Auctions for the right to enter into lease agreements with respect to land plots included into the list can only be held among SME (except for those SME defined by law that cannot be subject to such support).

Where a person being not an SME or a person who cannot be granted such support, has applied for a land plot included in the lists without a tender, they shall refuse such person in granting a land plot being in state or municipal ownership.

The transfer rights and obligations under the lease agreements concluded with SME with respect to land plots included into the lists to third parties or sub-lease thereof is prohibited.

Information on the benefits for the rent in respect of the land plot included into the lists shall be indicated in the information given in the auction notices.

The amendments introduced by the Law No. 185-FZ became effective from 3 July 2018.

2. Criteria to Qualify as Small and Medium Business Entities

The Federal Law No. 313-FZ dated 3 August 2018 amended the Federal Law 'On the Development of Small and Medium Businesses in the Russian Federation' ('SME Development Law').

It is clarified that SME can be not only economic companies, but also business partnerships that meet at least one of the requirements listed in the SME Development Law, in particular:

- 1) the members of a business company or business partnership are the Russian Federation, constituent entities of the Russian Federation, municipal formations, public and religious organisations (associations), charitable and other funds (except for investment funds) that hold in aggregate not more than 25 per cent in the charter capital of a limited liability company (LLC) or contributed capital of a business partnership, and not more than 25 per cent of voting shares in a joint-stock company (JSC),
- 2) members of a business company or business partnership - foreign legal entities and(or) legal entities that are not SMEs and hold in total not more than 49% of shares in the charter capital of an LLC or the contributed capital of a business partnership, or not more than 49% of voting shares of a JSC.

The above limitation on the total share of participation of foreign legal entities and(or) legal entities that are not SMEs does not apply to:

- 1) participants of business companies - foreign legal entities, whose income from business activity for the preceding calendar year does not exceed the limit set by the Government of the Russian Federation for medium businesses[1], and the average number of employees for the preceding calendar year does not exceed the limit value established by the SME Development Law[2] (except for foreign legal entities, whose permanent location is in the state included into the list of states and territories that provide preferential tax treatment and(or) do not provide for disclosure and provision of information in the conduct of financial transactions (offshore companies));
- 2) business companies that meet the following criteria:

- JSC the shares of which are traded on the organised securities market and classified as shares of the high-tech (innovative) sector of the economy in the procedure established by the Government of the Russian Federation;
- business companies, business partnerships the founders of which are legal entities included into the list of legal entities that provide state support to innovation activities approved by the Government of the Russian Federation.

Confirmation of compliance by foreign legal entities (except for offshore companies) with the requirements established by the SME Development Law on the average number of employees and the amount of income from doing business is made on the basis of the relevant opinion of an audit organisation.

Thereat, for the purpose of maintaining the uniform register of SMEs, audit organisations shall annually submit to the FTS of Russia a list of LLCs with participants - foreign legal entities that meet the conditions established by the law as of 1 January of the current calendar year. Such a list is formed by audit organisations on the basis of analysis of the data contained in the reports submitted by the relevant foreign legal entity to the tax authority of the country where such a foreign legal entity was established.

The amendments also clarified the provisions regulating the procedure for the annual entering of information on JSCs into the uniform register of SMEs transferred to the FTS of Russia by registrars maintaining shareholders' registers.

Federal Corporation for the Development of Small and Medium Businesses JCS is granted the right to provide services for the development of SME (including the provision of information, marketing, financial and legal support), not only to existing SME, but also to individuals who plan to engage in business activities.

The amendments to the SME Development Law entered into force on 3 August 2018, except for certain provisions that come into force on 1 December 2018.

[1] 2 billion roubles in accordance with the Decree of the Government of the Russian Federation No. 265, dated 4 April 2016.

[2] Up to 100 employees for small businesses (for micro-enterprises - up to fifteen employees); from 101 to 250 employees for medium businesses, unless other limit of the average number of employees is established for medium businesses, except for medium businesses that are business companies or business partnerships engaged in business activities in the area of light industry (class 13 'Manufacture of textiles', class 14 'Manufacture of apparel', class 15 'Manufacture of leather and leather products' of Section C 'Processing industries' under the All-Russian Classifier of Economic Activities), for which the limit value of the average number of employees is 1,000 employees under the Decree of the Government of the Russian Federation No. 1412, dated 22 November 2017.

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Contacts:

Yana Dianova

Director of the Corporate and Commercial Law Department, GRATA International (Moscow)

Tel: +7 (495) 660 11 84

E-mail: ydianova@gratanet.com

Locations

[RUSSIA](#)

Key contacts



Yana Dianova

Counsel

 Moscow, Russia

 +7 495 660 1184

 +7 906 734 6817

 ydianova@gratanet.com

